IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY NINETH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE Ch.S.R.K. PRASAD

WRIT PETITION Nos: 18263 & 18376 of 2004

WRIT PETITION No: 18263 of 2004

Between:

M.C.Bayapa Reddy, S/o.M.P.Yella Reddy,
R/o.Tadpatri, Anantapur Dist.

..... PETITIONER

AND

1 The Collector & District Magistrate, Anantapur.
2 The Government of A.P., rep. by its Chief Secretary, Hyderabad.
3 The Superintendent of Central prison, Cherlapally, RR District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Habeas corpus directing the Respondents to produce the detenu J.C. Chitharanjan Reddy, now detained in Central Prison, Cherlapally before this Hon'ble court and he may be ordered to be released forth with after declaring his detention as illegal and void.

Counsel for the Petitioner: MR.C.PRAVEEN KUMAR

Counsel for the Respondents: THE ADVOCATE GENERAL

WRIT PETITION No.18376 of 2004

Between:

M.C. Bayapa Reddy, S/o. M.P. Yella Reddy,
R/o. Tadpatri, Anantapur District.

..... PETITIONER

AND

1 The Collector and District Magistrate, Anantapur.
2 The Government of Andhra Pradesh, Rep. by its Chief Secretary, Hyderabad.
3 The Superintendent of Central Prison, Cherlapally, R.R. District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Habeas Corpus directing the Respondents to produce the detenu Sri Rama Narasimha Reddy, S/o. Tirupal Reddy, not detained in Central Prison, Cherlapally, before this Hon'ble Court and he may be ordered to be released forth with after declaring his detention as illegal and void.

Counsel for the Petitioner: MR.C.PRAVEEN KUMAR

Counsel for the Respondents: THE ADVOCATE GENERAL

The Court made the following:

ORAL COMMON ORDER: (By GB.J.)

Both the Writ Petitions can be disposed of by a common order as the contentions raised in these Writ Petitions are common and covered by the decisions of the Supreme Court.

2. The Collector and District Magistrate, Anantapur, passed the detention order dated 28-9-2004 with the following grounds and which is challenged in WP.No.18376 of 2004.

> "1. Cr.No.61/96 u/s. 5 of E.S. Act of Tadipatri Talik P.S.:- On 6-6-96 at about 6-30 p.m. at Peddapolamada village in your hayrick yard by and your associate were arrested. On your confession seized 13 country made bombs from your hayrick yard and sent you for remand. Case was acquitted on13-8-98 vide CC.No.86/97.
>
> 2. Cr.No.55/2k u/s. 5 of E.S. Act of Tadipatri Taluk P.S.:- On 2-7-2k at 6-00 a.m. at Peddapolamada village at the dilapidated slab polishing factory of Thrinatha Reddy you and another wee arrested and seized 11 country made bombs from your and your followers and sent you for remand. Case was acquitted on 13-8-98 vide CC.No.314/01. Case was acquitted on 13-8-03.
>
> 3. Cr.No.65/2k u/s 34(A) of A.P. Excise Act of Tadipagri Taluk P.S.:- On 26-7-2k at 6-00 p.m. at Peddapolamada village the accused Patra Ramaiah and Badugu Golla Kistaiah or Peddapolamada were selling the arrack on commission basis on the directions of you and getting illegal earnings and encouraging illegal business indirectly without licence. The arrack is being supplied by Kamma Bala Rangaiah of Arakativemula village of Puttur Mandal. Case was charged on 18-8-2k and it is PT vide C.C.No.13/04.

4. Cr.No.45/01 u/s.147, 148, 324 r/w 149 IPC of Tadipatri Taluk P.S.:- On 27-4-01 at 9-00 p.m. in Peddapolamada village you and 5 others formed yourselves into an unlawful assembly armed with sticks and stones and attacked Nadipi Golla Papaiah due to dispute over the house site situated in front of the house of Golla Papaiah. You and your followers beat him with sticks and caused latent injuries. When the complainant Y. Linganna came to his rescue, then you and your followers beat with stones and caused bleeding injuries. Case was acquitted on 8-9-01 vide C.C.No.358/01.

5. Cr.No.142/01 u/s 323, 430 IPC of Tadipatri Taluk P.S.:- Occurred on 7-12-01 at 1-00 p.m. near Tathagaripalli Village, Tadipatri Mandal you have diverted the H.L.C. canal water to your fields for the purpose of agriculture by removing mud in the canal. Later you wrongfully restrained the complainant P.Narayanaswamy abused him in filthy language and beat him with hands and kicked with legs and threatened him with dire consequences on the pretext that the latter is taking H.L.C. canal water to his fields instead of flowing the canal water to your fields. Case was acquitted on 9-11-02 vide C.C.No.128/02.

6. Cr.No.32/04 u/s 107 Cr.P.C. of Tadipatri Taluk P.S.:- In view of dangerous activities and frequent involvement in criminal cases security proceedings were initiated against you u/s. 107 Cr.P.C. in the court of Mandal Executive Magistrate, Tadipatri on 13-2-04 and you have bound over to keep good behavior for a period of six months with self surety for Rs.15,000/- vide M.C.No.17/04 dated 13-2-04.

7. Cr.No.125/04 u/s. 5 of E.S. Act of Tadipatri Taluk P.S.:- On 22-6-04 at 5-30 p.m. near Chinnapolamada cross road, Tadipatri-Peddapappur road, you was arrested and seized 8 country made bombs from your possession and sent you for remand. Case is under investigation."

3. Similarly, in W.P.No.18263 of 2004, the Collector and District Magistrate, Anantapur, passed the detention order dated with the following grounds:

"1. Muchukota PS Cr.No.80/2001 u/s.147, 148, 324 r/w 149 IPC:- On 2-11-2001 at 6-20 p.m. near flower mill at J. Kothapalli village of Pedda Pappur mandal you J.C.Chitharanjan Reddy along with eight others formed yourselves into an unlawful assembly armed with deadly weapons like daggers and hunting sickles and attacked one Kuchi Venkata Chalapathi and brutally murdered him by hacking with sickles and stabbing with danger due to political rivalry and land dispute. You were arrested on 23-11-2001 and sent for judicial remand. You were later released on bail. Case was charged and still pending trial vide SC No.271/2002 in the court of VI Fast Track, Gooty.

2. Cr.No.43/04 u/s 147, 148, 324, 307, 332, 435 r/w 149 IPC 25(1b)(a) and 27 Arms Act and Sec. 3 & 5 of ES Act and Police firing of Tadipatri Town PS:- On 7-4-04 at about 1 pm near in CB Road, Tadipatri Town where in you, J.C. Chitharanjan Reddy along with about 60 of your group persons formed into an unlawful assembly armed with deadly weapons like, fire arms, explosive substances, soda bottles, and stones etc., in connection with filing of nominations to A.P. Legislative Assembly Elections indulged in clashes with your rival group due to political rivalry. In this sequence you have also set fire to 1 jeep and 3 motorcycles. On account of the stone pelting 9 police personnel including the Deputy Superintendent Of Police, sustained injuries and the grave situation was later brought under control only after the arrival of additional forces, including opening of fire by the police. You, J.C.Chitharanjan Reddy obtained anticipatory bail from the High Court and surrendered before the court on 24-4-2004 and released on bail. The case is under investigation.

3. Cr.No.44/04 u/s 147, 148, 324, 307 r/w 149 IPC and 25 (1b)(a) Arms and 27 Arms Act and 3 & 5 of ES Act and Police Firing of Tadipatri Town PS:- On 7-4-04 at about 1-15 pm near sub Register Office, Tadipatri Town you, J.C. Chitharanjan Reddy and others of your group formed yourselves in to an unlawful assembly armed with fire arms, explosives substances, stones and soda bottles and attacked on the lives of your rival group in connection with filing of nominations during the A.P. Legislative Assembly elections resulting in fire arm injuries and stone hit injuries. The police party intervened and brought the situation under control by opening fire and 9 policemen and the Deputy Superintendent, of Police who were on duty also sustained injuries during their effort to bring the situation under control. You J.C.Chitharanjan Reddy obtained anticipatory bail from the High Court and surrendered before the court on 24-4-2004 and released on bail. The case is under investigation. This incident has created highest order of tension not only in Tadipatri Town but also in the entire Anantapur district during the election process.

4. Cr.No.20/04 u/s 107 Cr.P.C. of Muchukota PS:- In view of dangerous activities and frequent involvement in criminal cases security proceedings were initiated against you on 20-4-04 and you were bound over to keep good behaviour for a period of one year with self surety of Rs.50,000/- before the Mandal Execute Magistrate of Pedda Pappur Mandal vide M.C.No.10/04.

5. Tadpatri Urban PS Cr.No.77/04 u/s 3 & 5 of ES Act and 174 Cr.P.C. (Accidents death due to explosion of bombs):- You, J.C.Chithranjan Reddy presently residing at Tadpatri town are having political rivalry and faction with one Ramamohan Reddy of your native village Juturu of Pedda Pappur mandal. In order to use bombs against your rivals you, J.C.Chitharanjan Reddy involving seven others engaged in the manufacture of bombs in an under construction house of your follower I.Lachanna in Tadpatri town and after preparing five bombs suddenly, explosion took place at the place of manufacturing of bombs on 11-6-2004 at 11-00 a.m. resulting in the death of I. Lachanna and Y. Gangi Reddy while another person sustained severe injuries. The five manufactured bombs were recovered from your house and you were arrested on 12-7-2004 and sent for remand. Later, you were released on bail. The case is under investigation."

4. It is the contention of the learned Senior Counsel Mr.C.Padmanabha Reddy that

as some of the grounds mentioned in the detention order do not fall within the chapters XVI, XVII and XXII of I.P.C., the said grounds are irrelevant for issuance of the detention order and therefore on this ground alone, without going into other aspects, the order of detentions have to be set aside. The learned counsel would rely on the decision of the Supreme Court in **MUSTAKMIYA JABBARMIYA SHEIKH vs. M.M.MEHTA, COMMISSIONER OF POLICE AND OTHERS**[1]. The learned counsel would also submit that when once the irrelevant and relevant grounds are taken into consideration for passing the impugned order, the entire order of detention gets vitiated and the order will not survive to the extent of the relevant grounds as held by this Court in W.P.No.3736 of 2004 dated 16.3.2004.

5. On the other hand, learned Advocate General submits that the entire order has to be taken into consideration and if that is considered, even though some of the grounds are not directly covered by the definition of 'Goonda' under Section 2(g) of the Act, yet some of the other grounds which were referred to in the detention orders cover the situation and therefore, the order of detention cannot suffer from any infirmity or illegality.

6. We have heard the learned counsel for the petitioners and also the learned Advocate General.

7. Before considering the contentions of the learned counsel for both sides, it is necessary to extract the observations made by the Supreme Court in **MUSTAKMIYA'S** case (supra 1), which reads as follows:

> "In order to bring a person within the definition of Section 2(c) of the Act it is essential to show that such person either by himself or as a member of or a leader of a gang habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act. But as pointed out earlier the offence registered against petitioner under FIR of CR No.7 of 1994 of DCB dated 11-4-1994 is one under Sections 212/214 of the IPC which falls under Chapter XI of the IPC and not under any of the Chapters XVI or XVII which is the requirement of Section 2(c) of the

> Act. This incident, therefore, cannot be made a basis for satisfaction of the detaining authority that petitioner is a habitual offender, so as to sustain the order of detention."

8. The term 'Goonda' is defined under Section 2(g) of the Act, which reads thus:

> "Goonda means a person, who either by himself or as a member or a leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI, or Chapter XVII or chapter XXII of the Indian Penal Code."

9. Inasmuch as ground Nos.1, 2, 3 and 7 mentioned in the detention order dated (W.P.No.18376/2004) are wholly unconnected to the provisions contained in chapter Nos. XVI, XVII and XXII, we are of the considered view that they are irrelevant grounds and therefore they vitiate the entire order of detention. So also in the detention order dated (W.P.No.18263 of 2004) ground No.5 is not covered by the provisions contained in Chapter Nos. XVI, XVII and XXII. Accordingly, the said ground is also to be declared as irrelevant. With the result the entire order of the detention is vitiated. Therefore, without going into the other contentions attacking the detention orders, we are satisfied that the above grounds are sufficient to set aside the orders of detention in both the Writ Petitions.

10. Accordingly, both the Writ Petitions are allowed and the impugned orders of detention dated 28-9-2004 are quashed and the respective detenus in the Writ Petitions shall be set at liberty forthwith if they are not required in any other case.

_____

29-10-2004

ES

To

1 The Collector & District Magistrate, Anantapur.
2 The Chief Secretary, Government of A.P., Secretariat, Hyderabad.
3 The Superintendent of Central prison, Cherlapally, RR District. (by special messenger)

4. 2 CCs to the Advocate General, High Court Buildings, Hyderabad (OUT).

5. 2 CD copies